IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9002 of 1994
WITH
CIVIL APPLICATION NO.6250 OF 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIDYABEN W/O PET. NO.1 & 1 - Petitioner(s)

Versus

DAHIBEN P PATEL & 4 - Respondent(s)

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Appearance :
MR MI PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6 - 2, 2.2.2, 2.2.3, 2.2.4, 2.2.5,2.2.6
None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2,
MR BD PATEL for Respondent(s) : 1 - 3, 3.2.2,3.2.3 - 4.
MR NAVIN K PAHWA for Respondent(s) : 2, 4,
None for Respondent(s) : 3,
RULE SERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/09/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the

Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat dated 16-4-1994 passed in SRDD HKM VDB 12/92 in partly allowing the said application by quashing and setting aside the order passed by the Deputy Collector as well as the Collector dated 30-9-1991 and 29-2-1992 respectively in quashing and setting aside the Revenue entry Nos. 1747 and 1748 with respect to the land bearing survey Nos.630/2, 616, 569, 570, 571 and 573 situated at village Muval, Tal: Padra, Dist: Vadodara.

2. The dispute is with respect to the mutation entry Nos. 1747 and 1748 with respect to the land bearing survey Nos. 630/2, 616, 569, 570, 571 and 573 situated at village Muval, Tal: Padra, Dist: Vadodara. Respondent Nos. 1 to 4 sold the land bearing survey Nos.630/2 and 616 to the petitioner Nos.1 to 6 by registered sale deed on 25-5-1973 and the names of the petitioners came to be mutated in the revenue record vide entry No.1748 dated 1-8-1973 and the same was certified by the Mamlatdar on 21-1-1994. Similarly the land bearing survey Nos. 569, 570, 571 and 573 came to be sold by the respondent No.1 to the deceased father of the

petitioner Nos.7 to 12 by registered sale deed on 25-5-1973 and the names came to be mutated in the revenue record vide entry No.1747 on 1-8-1973 and the same came to be certified by the Mamlatdar on 21-1-1994. The respondent Nos.1 to 4 challenged the aforesaid revenue entries before the Deputy Collector, Vadodara in the year of 1988 and the Deputy Collector by its order dated 29-10-1988 dismissed the RTS Appeal No.36 of 1988 against which the respondent Nos.1 to 4 preferred revision application before the Collector, Vadodara being RTS Revision Application No.3/89 and the Collector, Vadodara by its order dated 29-12-1989 allowed the said revision application partly and remanded the matter to the Deputy Collector for deciding whether there is a breach of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 or not. On remand, the Deputy Collector, Vadodara by its order dated 30th September, 1991 dismissed the said appeal by holding that there is no breach of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short “the Act”) and confirmed the aforesaid two entries. Being aggrieved by and dissatisfied with the order passed by the Deputy Collector, Vadodara dated 30th September,

1991, respondent Nos.1 to 4 preferred revision application before the Collector, Vadodara being RTS Revision Application No.68/91 and the Collector, Vadodara by its judgment and order dated 29-2-1992 dismissed the said revision application. Being aggrieved by and dissatisfied with the judgment and order passed by the Collector, Vadodara dated 29-2-1992 passed in RTS Revision Application No.68/91, respondent Nos.1 to 4 preferred revision application before the Deputy Secretary, Revenue Department (Appeals), State of Gujarat being SRD No.12 of 1992 and the Deputy Secretary by its judgment and order dated 16-4-1994 partly allowed the said revision application by quashing and setting aside the order passed by the Deputy Collector, Vadodara as well as the Collector, Vadodara dated 30-9-1991 and 29-2-1992 respectively and set aside the aforesaid two entry Nos.1747 and 1748 and to make necessary entry in the revenue record that the transaction is in breach of Section 7 of the Act and directed to initiate the proceedings under Section 9 of the Act. Being aggrieved by and dissatisfied with the judgment and order passed by the Deputy Secretary dated 16-4-1994 passed in SRD No.12 of 1992, the petitioners – purchaser of the land in question have preferred the

present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri AJ Patel, learned senior advocate appearing on behalf of the petitioners has vehemently submitted that the judgment and order passed by the Deputy Secretary quashing and setting aside the aforesaid two entries on the ground that the transaction is in breach of Section 7 of the Act, is beyond the scope and ambit of rule 108. It is also further submitted that the Deputy Secretary could not have appreciated the aforesaid two entries, which came to be challenged by the respondent Nos.1 to 4 after the period of 14 years i.e. after unreasonable period and the same was not permissible apart from the fact that the respondent Nos.1 to 4 being the seller could not have challenged the aforesaid two entries. He has relied upon the judgment of this court in the case of Evergreen Apartment Co-operative Housing Society V Special Secretary (Revenue) reported in 1991(1) GLR page 113 in support of his submission that while exercising RTS jurisdiction, the Revenue Authority cannot consider the validity of the transaction on the ground that the same is in breach of any other law and the said question should be left to the appropriate authority. However, the Revenue

Authority cannot ignore the sale deed and the Revenue Authority is required to give effect to the sale deed in the revenue record. It is also further submitted that as such the Deputy Collector by order dated 30-9-1991 had already withdrawn the notice issued under the provision of the Act and as such there is no breach of Section 7 of the Act as the petitioners are the owners of the adjacent land and therefore, it is requested to allow the present Special Civil Application.

4. Shri NK Pahwa, learned advocate opposed the present Special Civil Application by submitting that the transaction in question is in breach of Section 7 of the Act. The Deputy Secretary has rightly set aside the aforesaid two entries and has rightly passed an order directing to initiate the proceedings under Section 9 of the Act for breach of Section 7 of the Act and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard learned advocates for the parties.

6. It is required to be noted that the petitioners are the purchaser of the land in question, who have purchased the same by registered sale deed from the respondent Nos.1 to 4. The necessary entries were mutated in the revenue record in the year 1974 and the said entry

Nos.1747 and 1748 came to be challenged by the respondent Nos.1 to 4 in the year 1988-89 i.e. after a period of almost 14 years, which was after unreasonable period, which was not permissible at all. It is also required to be noted that as such the respondent Nos.1 to 4 are the seller and are party to the transaction and therefore, they could not have challenged the aforesaid two entries on the ground that the said sale transactions are in breach of Section 7 of the Act. It is also held by the learned Single Judge of this court in the case of Evergreen Cooperative Housing Society (supra) that the revenue authority while exercising the RTS jurisdiction, has no jurisdiction to decide and consider the principle of any other law and the necessary entries are required to be made in the revenue record on the basis of the sale deed and the question with regard to the breach of any other law should be left to the appropriate authority under the appropriate law of which the breach is alleged. Even the learned Single Judge of this court in the case of Ganeshbhai Manilal Mayavanshi V State of Gujarat and Others reported in 2005(9) GHJ page 634 has held that the Revenue Authority are bound to give effect to sale deed in the revenue record. However, if the revenue

authority is of the opinion that the transaction is in breach of a particular law / Act, then necessary additional entry could be made and the dispute should be referred to the appropriate authority for deciding the said question with regard to the breach.

7. Under the circumstances, the judgment and order passed by the Deputy Secretary in quashing and setting aside the aforesaid two entries i.e. entry Nos.1747 and 1748 on the ground that the same are in breach of Section 7 of the Act cannot be sustained. However, the direction issued by the Deputy Secretary directing the Competent Authority to initiate the proceedings for alleged breach of Section 7 of the Act is required to be confirmed.

8. For the reasons as stated above, the petition succeeds partly. The judgment and order passed by the Deputy Secretary dated 16-4-2004 passed in SRD No.12 of 1992 in so far as the quashing and setting aside the entry Nos.1747 and 1748 with respect to the land bearing survey Nos.630/2, 616, 569, 570, 571 and 573 is hereby quashed and set aside and rest of the directions issued by the Deputy Secretary (Appeals) in its aforesaid order directing the revenue authority to make an additional entry to the effect that the transaction is

prima facie in breach of Section 7 of the Act and directing appropriate authority to initiate the appropriate proceedings for alleged breach of Section 7 of the Act while aforesaid directions/sale deed is hereby confirmed and the appropriate authority is directed to take appropriate decision in accordance with law and on merits as early as possible, preferably within a period of six months from the date of receipt of this order. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

Shekhar/-